

(1993) 02 KAR CK 0026
In the Karnataka High Court
Case No : W.A. No. 1757 of 1992

State of Karnataka

APPELLANT

Vs

Saraswathi Education Society

RESPONDENT

Date of Decision : 16-02-1993

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21
Grant-in-Aid Code Rules — Rule 10 (4), 12

Citation : (1993) ILR (Kar) 862 : (1993) 2 KarLJ 12

Hon'ble Judges : Shivashankar Bhat, J;Mirdhe, J

Bench : Division Bench

Advocate : S.R. Nayak, for the Appellant; G. Shanthappa, for the Respondent

Final Decision : Dismissed

Judgement

Shivashankar Bhat, J.—Respondent in this Appeal filed a Writ Petition to set aside the order of the State Government dated 26.6.1989, whereby the State Government rejected the application of the respondent for permission to start an English Medium Primary School at Hassan.

2. According to the respondent, it has been running an Institution since 1986-87 and submitted an application for permission; School was inspected by the various authorities, who recommended the granting of permission. Along with the application, petitioner submitted a representation of Master Control Facility Staff Welfare Association, a registered body of the staff belonging to the Space Department, comprised in about 170 families; they were anxious to have an English Medium Primary School in their locality.

3. The State Government rejected the application under the impugned order. The learned Single Judge set aside the said order and directed the State Government to reconsider the question afresh. Hence this Writ Appeal.

4. In view of the special features of this case (case of a non-minority institution), we have considered it proper to write a supplemental Judgment in this case - to

be read along with the Judgment rendered today in W.A.No. 2211/1992, Reported Supra @ Page 834. This is a typical case of a non-minority institution seeking permission to start an English Medium Primary School. In the Decision pronounced today in W.A.No. 2211 of 1992 we have held that substantially there is no difference between the right of the minority and of the majority to start and run an educational institution. The rights of the majority are found in Articles 14, 19 and 21 of the Constitution; these Articles are available to minorities also, but to preserve the said right of the minorities being defeated by others, said right is emphatically protected under Article 30. We have also held that, the purpose of application to an University in the case of an institution imparting higher education is achieved in the case of institutions imparting lower educations (such as in Primary or High Schools) by the requirement of permission to start them and recognition to be given by the State Government. The purpose of these requirements is to ensure the growth and excellence of the children in the field of education; the said purpose is mainly concerned with the academic and educational character of the institution; in other words, the institution in question may function as a proper vehicle of education, maintaining appropriate standards, so that the children are "properly educated". Therefore, as a condition for the permission to be given by the State, it is always open to the State to lay down reasonable conditions to maintain the excellence in standard of education.

5. Just like affiliation to minority is not a subject of Fundamental Right, there cannot be a Fundamental Right to get permission from the State to start an educational institution leading to its recognition by the State. Since such a permission is not a matter of Fundamental Right, the subject, governing the grant of permission could be dealt with by the State by issuing executive instructions or orders; it can be the subject of regulation by recourse to the executive power of the State; an enacted law governing the subject is not necessary.

6. However, this executive power of the State is not absolute. It is now a firmly established principle of our Constitutional Law that, there is no such power as an absolute power in the State, which can be exercised as it deems fit. Exercise of every executive power is subject to the touch stone of reasonableness and fairness. As pointed out by the Supreme Court in *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, "concept of reasonableness and non-arbitrariness pervades the entire Constitutional scheme and is a golden thread which runs through the whole of the fabric of the Constitution."

7. This power to accord permission and recognise an educational institution, also is subject to this requirement of it being exercised reasonably and unarbitrarily. The power has to be exercised normally, to advance the purpose of maintaining excellence in the standard of education. Therefore, the criteria applied by the State to accord the permission should be relevant to the above purpose. Lower education has primarily two purposes - (i) to enable the blossoming of the

child's personality; it should aid in the making of a proper character, develop cultural aptitudes, imbibe ideas to mould the personality so as to make the child, a decent citizen of the world and (ii) to lead the child to a higher education or train him vocationally, so that education would be a means of employment or livelihood. The first purpose can be realised in any educational institution, even without it being recognised by the State; however the 2nd purpose cannot be realised without the lower education being recognised by the State. Therefore, an arbitrary refusal to start and recognise an educational institution results in denial of a right to impart education to the children to train them, for making them suitable for proper employment or provide a means of livelihood. In this sense, denial of sufficient number of educational institutions, actually results in impeding the exercise of the Fundamental Rights.

8. In the case of minority institutions, an arbitrary refusal of application was held as resulting in making the Fundamental Right under Article 30, a "teasing illusion". A similar situation would be caused in the case of non-minorities, by refusing them permission to start educational institutions, thereby render the Fundamental Rights under Articles 19 and 21 "ropes of sand".

9. Therefore, the provisions of the Grant-in-Aid Code (the "Code" for short) are to be interpreted to advance the purpose behind them. Approach ought to be to encourage the growth of much needed educational institutions to cater to the requirements of our ever growing population. Unless it is clearly established that the requirements of the Code are not satisfied, the State should not hesitate to grant the permission.

10. Competition amongst the institutions to impart education would be conducive rather than contrary to the public welfare; creation of a monopoly in the existing institutions, by preventing fresh institutions from being set up, would lead to commercialisation and other unhealthy trends in the field of education.

11. When the State Government denies the permission, the denial should be on proof of facts relevant thereto, enumerated in the Code. For example, if the denial of permission is on the ground that a new school is not necessary in the locality, the order should disclose the basic facts such as the existing student population; possibility of its stagnation, number of schools available, the reason to hold as to why the applicant is incapable of running proper educational institution etc., etc. A mere repetition of the words found in Rules 11 and 12 of the Code are not sufficient, because, those are the conclusions to be reached, based on certain proved facts.

12. The impugned order in the instant case gives the following five reasons:

"(i) There are no English speaking linguistic minorities in the area under consideration.

(ii) The linguistic minorities in the area have facilities for education in their mother-tongue.

- (iii) The petitioner has violated the provisions of Rule 10(iv) of Grant-in-Aid Code.
- (iv) The attendance is far below the minimum attendance prescribed in rule 12 of Grant-in-aid Code.
- (v) There is no jurisdiction for grant of permission to run an English medium school."

13. Reasons (ii) and (v) are no reasons at all. Basic facts are not stated anywhere. The existence of families of those employed by the Space Department (stated to be 174 families, by the petitioner) and their requirements not considered at all. Hassan being an important City (it is also the District Headquarters) with several Banks and Industrial undertakings, has not been noticed. The order purports to punish the petitioner for starting the institution already, without permission, by rejecting the application and at the same time it is stated that "attendance is far below the minimum attendance prescribed under Rule 12." These contradict each other; without permission, if a school is started, parents may hesitate to send their children and this factor would affect the attendance required; in the instant case, petitioner has given details showing that, student strength is far more than the minimum required as per Annexure-B to the Writ Petition.

14. In almost every case before us, we found that impugned orders were made in similar manner; wordings are substantially similar and it is clear that the State Government acted mechanically in making these orders, without making any effort to give the basic facts needed to support its conclusions.

15. Therefore, the rejection of the application for permission was arbitrary and the learned Single Judge directed the State Government to reconsider the question; the learned Single Judge had not directed the grant of permission straight away.

16. In the circumstances, there is no reason to interfere with the Order under Appeal. Writ Appeal is accordingly dismissed. The State Government is directed to consider the application of the petitioner afresh on or before 30th April 1993, after affording an opportunity to the petitioner to place further material, if any. It is ordered accordingly.